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In The Supreme Court of the United States

STATE OF ILLINOIS,

Petitioner,

v.

ROBERT S. LIDSTER,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, THE AMERICAN CIVIL LIBERTIES UNION, AND THE ACLU OF ILLINOIS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

The National Association of Criminal Defense Lawyers (NACDL) is a professional bar association with almost 10,000 direct members, and 80 affiliates representing another 28,000 members. NACDL has members in all fifty states, and the American Bar Association recognizes NACDL as an affiliate organization and awards it full representation in its House of Delegates. Among NACDL's primary objectives is the preservation of the liberties protected by the Constitution through vigorous advocacy against the excesses of law enforcement. Consistent with this interest, NACDL has participated in an *amicus* capacity in several of the Court's recent Fourth Amendment decisions. *See United States v. Drayton*, 536 U.S. 194 (2002); *United States v. Arvizu*, 534 U.S. 266 (2002); *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). This matter requires the Court to assess the contours of the Fourth Amendment's prohibitions on suspicionless seizures, and therefore squarely implicates NACDL's strong interest in ensuring that law enforcement strictly comply with Fourth Amendment mandates.

The American Civil Liberties Union (ACLU) is a nationwide, nonpartisan, nonprofit organization with more than 400,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this country's civil rights laws. The ACLU of Illinois is one of its statewide affiliates. Since its founding in 1920, the ACLU has appeared before this Court in numerous cases

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[1] This brief was not authored in any part by counsel for either party. In addition, no person or entity other than *amici curiae* and its counsel made a monetary contribution to the submission of this brief.

involving the scope and meaning of the Fourth Amendment. In particular, the ACLU served as direct counsel in this Court's two most recent roadblock cases: *Edmond*, 531 U.S. at 32, and *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990). The proper resolution of this case is, therefore, a matter of direct concern to the ACLU and its members.

STATEMENT OF THE CASE

Amici curiae adopt the Statement of the Case set forth in Respondent's brief.

SUMMARY OF ARGUMENT

The Fourth Amendment articulates a principle reflective of the essence of democratic freedom – that individual citizens are presumed upstanding and, as such, are entitled to be free from government intrusion in their affairs. As reflected both in the Framers' original conception of the Amendment and in this Court's repeated analyses of the provision, informational seizures, like those at issue here, are fundamentally irreconcilable with this principle, and are therefore unconstitutional.

The Framers intended that the Fourth Amendment embody a broad prohibition on suspicionless searches and seizures, and this Court's relevant decisions confirm that proscription. Indeed, prior to this Court's decision in *Terry v. Ohio*, 392 U.S. 1 (1968), the Court held that only those seizures which satisfied the requirement of probable cause were constitutionally permissible. *Terry* recognized a

limited exception to the probable cause mandate, permitting brief investigative detentions when officers had reasonable suspicion to believe that the detainee was involved, or would imminently be involved, in criminal activity. While *Terry* represented a deviation from the probable cause rule, it nevertheless reaffirmed the broad principle that some degree of individualized suspicion was required before government could intervene in the life pursuits of presumptively law-abiding citizens. Subsequent to *Terry*, the Court carved out a further exception to the *Terry* exception, authorizing suspicionless seizures in limited circumstances in which the individual detainee was specifically implicated in the government's regulatory purposes. Though, like *Terry*, these so-called "special needs" cases represent a deviation from the constitutional command, also like *Terry*, these cases are limited to a tightly circumscribed class of seizures. Critically, neither the *Terry* cases permitting seizures in the absence of probable cause, nor the "special needs" cases permitting seizures in the absence of individualized suspicion, have ever authorized suspicionless detentions merely for the purpose of ascertaining whether the detainee had information pertaining to the alleged criminal conduct of third parties.

Here, Petitioner has engaged in an indiscriminate program of roadblock seizures, in which all individuals coincidentally finding themselves in the vicinity of the roadblock were, on a suspicionless basis, subjected to informational detention. This program, however, is completely incompatible with the Constitution's broad prohibition on suspicionless seizures. The Fourth Amendment simply does not permit government, without suspicion, to seize individuals merely for the purpose of determining

whether they might have information pertaining to the conduct of third parties. While law enforcement officials are certainly empowered to approach citizens and question whether they have information relevant to a legitimate law enforcement purpose, this Court's precedents, in addition to the Fourth Amendment's underlying values, make undeniably clear that officials may not forcibly detain individuals in an effort to effect that purpose. For these reasons, Petitioner's regime of roadblock seizures violates the dictates of the Fourth Amendment, and must therefore be held unconstitutional.

ARGUMENT

I. THE FOURTH AMENDMENT STRICTLY PROHIBITS INFORMATIONAL SEIZURES.

As Justice Brandeis famously observed, the Fourth Amendment embodies an individual "right to be let alone," an entitlement constituting the "most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States*, 227 U.S. 438, 478 (1928) (Brandeis, J., dissenting). In particular, the Fourth Amendment ensures the right of citizens to conduct their affairs unfettered by governmental intrusion, save to the extent such meddling is strictly authorized under law. According to this Court:

> No right is held more sacred, or is more carefully guarded, . . . than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestioned authority of law.

Union Pac. R. Co. v. Botsford, 141 U.S. 250, 251 (1891); *see also Terry*, 392 U.S. at 8-9 (1968) (providing that the Fourth Amendment protects the "inestimable right of personal security"); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976) ("The Fourth Amendment imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.").

This Court's recognition of the personal autonomy embodied in the Fourth Amendment is absolutely consistent with the principles which motivated the Framers to draft and ratify that Amendment in the first place.[2] The Framers were centrally concerned with general warrants, which had permitted sweeping searches and seizures of broad areas and subject matters without individualized suspicion. *See* William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning, 682-1791*, at 1402, 1499-1501 (1990) (Ph.D. Dissertation at Claremont Graduate School);[3] Thomas Y. Davies, *Recovering the*

[2] This Court has repeatedly viewed the original meaning of the Fourth Amendment as a key consideration in divining the provision's content in a particular context. *See Wyoming v. Houghton*, 526 U.S. 295, 299 (1999) (providing that, in interpreting the Fourth Amendment, the Court "inquire[s] first whether the act was regarded as an unlawful search or seizure under the common law when the amendment was framed"); *Florida v. White*, 526 U.S. 559, 563 (1999) ("In deciding whether a challenged government action violates the [Fourth] Amendment, the Court takes care to inquire whether the action was regarded as an unlawful search and seizure when the Amendment was framed.").

[3] Three members of this Court have recognized Cuddihy's dissertation as "one of the most exhaustive analyses of the original meaning of the Fourth Amendment ever undertaken." *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 669 (1995) (O'Connor, dissenting).

Original Fourth Amendment, 98 Mich.L.Rev. 547, 554-55 (1999); Tracey Maclin, *When the Cure for the Fourth Amendment is Worse Than the Disease*, 68 S.Cal.L.Rev. 1, 9-12 (1994); *see also Vernonia School Dist.*, 515 U.S. at 669 (O'Connor, dissenting) ("[W]hat the Framers of the Fourth Amendment most strongly opposed ... were general searches – that is, searches by general warrant, by writ of assistance, or by any other similar authority."). The historical record is replete with ratification-era denunciations of the dangers to personal freedoms posed by these general warrants. Patrick Henry, for example, proclaimed during the Virginia ratification debates of 1788 that:

> general warrants, by which an officer may search suspected places, without evidence of the commission of a fact, or seize any person, without evidence of his crime, ought to be prohibited. As these are admitted, any man may be seized, any property may be taken, in the most arbitrary manner, without any evidence or reason. Even the most sacred may be searched and ransacked by the strong hand of power.

3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 587-88 (Jonathan Elliot ed., 2d ed. 1838); *see* Davies, *supra*, at 580-81 (quoting various ratification-era sources describing general warrants as providing "a power that places the liberty of every man in the hands of a petty officer" and permitting seizures to be "made at discretion [by] any common fellows ... upon their own imaginations, or the surmises of their acquaintances, or upon other worse and more dangerous intimations").

Moreover, because ratification-era officers generally had no *ex officio* authority to arrest, and their power to

seize and search was therefore dependent on the issuance of a warrant, the Framers understood that regulation of the warrant necessarily circumscribed the power to seize and search. *See* Davies, *supra*, at 578. General warrant seizures, then, comprised the entire class of suspicionless seizures that were conducted during the ratification era. *See id.* Thus, because the Framers added the Fourth Amendment precisely to proscribe suspicionless searches and seizures based upon general warrants, and because general warrants, in turn, enabled those suspicionless seizures that a ratification-era officer could potentially perform, the historical record reveals that the Framers specifically intended the Fourth Amendment to broadly prohibit suspicionless seizures. *See* Tracey Maclin, *The Complexity of the Fourth Amendment: A Historical Review*, 77 B.U.L. Rev. 925, 970-71 (1997) (providing that the history surrounding ratification demonstrates that "promiscuous warrantless intrusions exhibiting the same traits as general warrants ... violate the principle embodied" in the Fourth Amendment); Davies, *supra*, at 582 (concluding, in the context of an exhaustive review of the history of the Fourth Amendment, that "it is wholly implausible" that the Framers would have approved of the broad use of warrantless, and therefore suspicionless, intrusions).[4]

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[4] Although the history establishes a broad prohibition on suspicionless seizures, it should be noted that narrow exceptions, immaterial to the issues involved here, were recognized to the overarching rule. Specifically, during the ratification era, a number of states permitted warrantless inspections of commercial enterprises pursuant to regulatory objectives, and federal law authorized limited warrantless commercial searches for tax collection and customs purposes. *See* Cuddihy

(Continued on following page)

Informed by the Framers' intentions with respect to the Fourth Amendment, this Court's precedents have effected a longstanding prohibition of suspicionless seizures. Specifically, the Court has concluded that the Fourth Amendment fundamentally proscribes personal seizures in the absence of probable cause. *See Florida v. Royer*, 460 U.S. 491, 498 (1983); *Dunaway v. New York*, 442 U.S. 200, 207-09 (1979). Indeed, "prior to [this Court's ruling] in *Terry v. Ohio*, any restraint on the person amounting to a seizure for the purposes of the Fourth Amendment was invalid unless justified by probable cause." *Royer*, 460 U.S. at 498; *see also Dunaway*, 442 U.S. at 208 ("*Terry* for the first time recognized an exception to the requirement that Fourth Amendment seizures of persons must be based on probable cause."). In *Terry*, this Court recognized "a limited exception to this general rule," *Royer*, 460 U.S. at 498; *see Terry*, 392 U.S. at 27 (providing that its deviation from probable cause is "narrowly drawn"), permitting brief investigatory detentions when an officer reasonably suspects that an individual has committed or is about to commit a crime, *see id.*; *see also United States v. Sokolow*, 490 U.S. 1, 17 (1989). While *Terry* deviated from the constitutional mandate of probable cause, it nevertheless authorized seizures on the basis of less-than-probable-cause only when an officer had an empirically-justifiable, individualized suspicion that the detainee was engaged in wrongdoing; in so doing, the

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at 1501-02, 1507-08. These narrow exceptions, which, interestingly, mirror the "special needs" exceptions currently recognized by the Court, *see infra*, are immaterial to the informational seizures at issue here.

Court expressly prohibited *Terry* seizures on the basis of an "unparticularized suspicion." *See Terry*, 392 U.S. at 27.

In recent times, the Court has recognized a circumscribed corollary to the *Terry* exception, authorizing seizures in the absence of the individualized suspicion mandated by *Terry* in narrowly-defined circumstances. These cases permit suspicionless seizures in a carefully delimited set of "special needs" cases in which unique regulatory and administrative interests are implicated. *See infra*. Notably, the special needs cases all involve instances in which the individuals detained are themselves directly implicated in the government's regulatory purposes, and none involve circumstances, like those here, in which government is seeking to detain an individual as part of a witness identification and questioning scheme. These cases, in short, do not imply a basis on which to find the constitutionality of seizures seeking information concerning third parties.

This Court's jurisprudence therefore unmistakably informs that a showing of probable cause is the constitutional "default position" with respect to governmental seizures of the person. *Terry* creates a narrow doctrinal exception for seizures predicated upon reasonable, individualized suspicion of wrongdoing. And this Court has recognized an even more limited exception to this exception in the special needs context. Accordingly, the constitutional scope of seizures conducted without individualized suspicion, let alone probable cause, could scarcely be more circumscribed.

Consistent with this rejection of suspicionless seizures as a constitutionally permissible governmental course of conduct, this Court's precedents do not permit roadblock

seizures for the purpose of inquiring whether the individual detainee might have information relevant to a pending criminal investigation.[5] While it is true, as Petitioner contends, that officers "do not violate the Fourth Amendment by approaching individuals . . . and putting questions to them" concerning the conduct of third parties, *see* Petitioner's Br. at 12 (quoting *Drayton*, 536 U.S. at 200); *see also Royer*, 460 U.S. at 497, such questioning is permissible only to the extent that it does not rise to the level of a seizure, *see Drayton*, 536 U.S. at 200 (recognizing that such questioning is permissible only when the individual "has not been seized"). The constitutionality of this kind of questioning, then, turns on the voluntary character of the exchange: the questioning is permissible only insofar as

[5] Contrary to the suggestion of the United States, *see* Brief for the United States as *Amicus Curiae* at 23 n.14, it is well-settled that roadblock detentions constitute seizures for Fourth Amendment purposes. *See Edmond*, 531 U.S at 40; *Sitz*, 496 U.S. at 450; *Martinez-Fuerte*, 428 U.S. at 556; *see also Delaware v. Prouse*, 440 U.S. 648, 653 (1979) ("[S]topping an automobile and detaining its occupants constitute[s] a 'seizure' within the meaning of [the Fourth Amendment], even though the purpose of the stop is limited and the resulting detention quite brief."). Moreover, even if this question were not already decided, the roadblocks here at issue would surely constitute seizures given that the Lombard Police Department made specific efforts to ensure that drivers could not avoid them. *State of Illinois v. Lidster*, 202 Ill.2d 1, 3 (2002) (providing that the Lombard officers were placed such that oncoming motorists could not "skirt" the roadblock); *see also Terry*, 392 U.S. at 16 ("[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."). In any event, the argument of the United States is not before this Court since Petitioner has already conceded that its roadblock constitutes a seizure for Fourth Amendment purposes. *See* Illinois' Petition for Writ of Certiorari at 4, 10; *see also Reno v. Koray*, 515 U.S. 50, 55 n. 2 (1995) (failing to consider argument raised by *amicus curiae* where it was not raised by interested party).

the individual citizen has a choice not to entertain or respond to the officer's inquiries, and may disengage from the interrogation unilaterally and at any time. *See id.*; *cf. I.N.S. v. Delgado*, 466 U.S. 210, 215 (1984) (recognizing that a Fourth Amendment seizure occurs when "a reasonable person would have believed that he was not free to leave"). In these situations, an individual's voluntary accommodation of the officer's inquiries is the jurisprudential equivalent of a willing, non-coercive conversation between two co-equals and, as such, does not implicate the protections of the Fourth Amendment. *See Royer*, 460 U.S. at 498 (recognizing the absence of a constitutional violation where no seizure has occurred and the individual has voluntarily submitted to officer questioning).

This Court's precedents are clear, on the other hand, that the suspicionless questioning of potential witnesses is impermissible when the questioning rises to the level of a seizure. Indeed, the Court has unequivocally concluded that an individual "may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds." *Royer*, 460 U.S. at 498. There is simply no authority permitting coercive, government seizures merely so that officers may speculatively question individuals on whether they might have information material to an existing investigation. The narrow range of "special needs" suspicionless seizures permitted under the Fourth Amendment, discussed more fully below, *see infra*, pertains entirely to detentions designed to uncover regulatory and other kinds of non-criminal illegalities among those detained. The cases, however, neither suggest nor imply that government may conduct suspicionless seizures pursuant to the generalized and indefinite hope that any

given detainee might have information relevant to the conduct of third parties.

Moreover, such a conclusion would be corrosively irreconcilable with the imperatives of the Fourth Amendment – imperatives reflected not only in this Court's decisions, but in the Framers' unambiguous disdain for suspicionless seizures. Given the large number of vehicular crimes occurring on America's thoroughfares, *see, e.g.*, United States Department of Transportation, National Highway Traffic Administration, *Traffic Safety Facts 1998: Overview* (1998), <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF98/Overview98.pdf> (discussing hundreds of thousands of potential vehicle-related crimes), in addition to the fact that, as a nation of highways, *see, e.g.*, Wendell Cox & Jean Love, *40 Years of the U.S. Highway System: An Analysis of the Best Investment a Nation Ever Made* (1996), <http://www.publicpurpose.com/freeway1.htm#exec> (discussing high density of roadway usage and centrality of highways to nation's growth), innumerable crimes occur in the proximity of a roadway, there is an essentially limitless supply of predicates which could serve as the basis for roadblock detentions of the type conducted by Petitioner. Petitioner's argument would therefore, based upon the mere occurrence of an offense near a highway, allow suspicionless seizures of all individuals in the area pursuant to the entirely hypothetical and wholly indiscriminate hope that any particular detainee might have material information. A constitutional rule permitting suspicionless seizures of such an unbounded scope and applicability, *amici curiae* respectfully submit, would be decidedly antithetical to two centuries of jurisprudence repeatedly emphasizing that seizures in the absence of individualized suspicion, let alone probable cause, are rare and narrowly

circumscribed exceptions to the constitutional rule. Accordingly, this Court should hold that informational seizures are categorically unconstitutional and, for that reason, reject the roadblock seizures conducted by Petitioner.

II. INFORMATIONAL SEIZURES DO NOT FALL WITHIN THE LIMITED CATEGORY OF PERMISSIBLE SUSPICIONLESS SEIZURES.

As discussed above, suspicionless seizures are exceptions to the *Terry* rule of individualized suspicion, which itself is an exception to the Fourth Amendment presumption of probable cause. Suspicionless seizures are therefore presumptively unconstitutional, *Edmond*, 531 U.S. at 37; *Chandler v. Miller*, 520 U.S. 305, 313 (1997), and are permissible only in limited circumstances. Specifically, suspicionless seizures are allowed only when "special needs beyond the normal need for law enforcement" are at issue. *Skinner v. Railway Labor Executives' Assoc.*, 489 U.S. 602, 619 (1989); *see also Vernonia School Dist.*, 515 U.S. at 653; *Chandler*, 520 U.S. at 314. These circumstances are limited to those in which government seeks to further unique regulatory interests in non-criminal matters, as suspicionless seizures designed to serve "the ordinary enterprise of investigating crimes" are clearly prohibited. *Edmond*, 531 U.S. at 44.

In the roadblock context, this Court has upheld two programs of suspicionless seizures – both of which were permitted precisely because they involved unique, regulatory interests. In *Martinez-Fuerte*, the Court found constitutional a program of permanent roadblocks near the Mexican border which were designed to contain and deter illegal immigration. *See* 428 U.S. at 543. In upholding

these roadblocks, the Court explicitly recognized the unique sovereign interests implicated in border control, *id.* at 551-52; *see United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985) (recognizing *Martinez-Fuerte* as a component of a body of precedents that "reflect longstanding concern for the protection of the integrity of the border"); *see also United States v. Ramsey*, 431 U.S. 606, 616 (1977) (recognizing the well-settled "right of the sovereign to protect itself by examining persons and property crossing into this country"), and emphasized the "formidable law enforcement problems" posed by immigration matters, *id.* at 552. The Court additionally noted that the overriding purpose of the immigration checkpoints was to "minimize illegal immigration," *id.* at 552, and that consistent with this purpose, "[m]ost illegal immigrants are simply deported" civilly, rather than prosecuted criminally, *id.* at 553 n. 9; *see Almeida-Sanchez v. United States*, 413 U.S. 266, 278 (1978) (providing that border checkpoints "are undertaken for administrative rather than prosecutorial purposes, [as] their function is simply to locate those who are illegally here and deport them"); *see also I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984) (recognizing that the "primary objective" of immigration apprehensions is civil deportation). Thus, the roadblocks at issue in *Martinez-Fuerte* were deemed constitutional given both the strong and unique sovereign interests implicated in border control, and the fact that the government's overriding purpose was the regulatory and prospective integrity of the border, rather than the criminal prosecution of illegal immigrants. *See also Edmond*, 531 U.S. at 38-39 (concluding that the *Martinez-Fuerte* roadblocks were upheld precisely because they were not primarily designed to detect "ordinary criminal wrongdoing").

Similarly, in *Sitz*, the only other case in which this Court has upheld a program of suspicionless roadblocks, the Court deemed constitutional a scheme of sobriety checkpoints. *See* 496 U.S. at 455. In so doing, the Court relied upon the fact that the sobriety checkpoints were predicated upon the State's "interest in preventing drunken driving," *id.*, and reducing the dangers that impaired drivers pose to the driving public, *id.* at 447-48. Indeed, this Court made clear in *Edmond* that the roadblocks involved in *Sitz* were found constitutional precisely because they involved regulatory interests in preventing the prospective threats to public safety posed by drunk drivers, as opposed to criminal interests in prosecuting individual violators of drunk driving laws. *Id.* at 39. The *Edmond* court specifically emphasized that:

> [The *Sitz*] checkpoint program was clearly aimed at reducing the immediate hazard posed by the presence of drunk drivers on the highways, and there was an obvious connection between the imperative of highway safety and the law enforcement practice at issue.

Id.; *see also id.* at 43 (emphasizing that drunk drivers pose an "immediate vehicle-bound threat to life and limb").

While *Martinez-Fuerte* and *Sitz* upheld roadblock programs explicitly because they served special regulatory, non-criminal interests, this Court has very recently disallowed a set of roadblocks which, on the contrary, served the ordinary, criminal needs of law enforcement. In *Edmond*, the Court held unconstitutional a program of roadblocks intended to interdict the flow of illicit drugs. *Edmond*, 531 U.S. at 40-41. In finding these roadblocks violative of the Fourth Amendment, the Court emphasized that the "primary purpose of the . . . narcotics checkpoint

program is to uncover evidence of ordinary criminal wrongdoing." *Id.* at 42. Reinforcing the constitutional distinction between non-criminal, special needs purposes and ordinary, criminal objectives, the Court, while appreciating the gravity of the public health and safety interests implicated in narcotics distribution, *id.* ("There is no doubt that traffic in illegal narcotics creates social harms of the first magnitude."), stressed that "the gravity of the threat alone cannot be dispositive of questions concerning the means law enforcement officers may employ to pursue a given purpose." *Id.* Criminal matters, concluded the Court, invariably involve matters of grave public importance, and simple reliance on the weightiness of the law enforcement pursuit at issue would effectively eviscerate the Fourth Amendment's protections against unreasonable seizures. *Id.* Indeed, given the practically universal scope of the criminal laws, the Court held that it could not "sanction stops justified by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." *Id.* at 44. Accordingly, the Court held that the line between suspicionless seizures designed to serve special, non-criminal regulatory objectives, and those intended to promote the common interests of criminal investigation, must be preserved and, on that basis, deemed unconstitutional the drug interdiction checkpoints at issue. *Id.* at 48.

The Court's application of the special needs exception in these roadblock cases is entirely consistent with its application of the doctrine in other contexts. In a range of cases, this Court has repeatedly held suspicionless seizures permissible only to the extent they serve special needs beyond ordinary crime control. *See, e.g., Vernonia School Dist.*, 515 U.S. at 665 (permitting suspicionless

drug testing given school district's special regulatory interest in ensuring student safety); *South Dakota v. Opperman*, 428 U.S. 364 (1976) (permitting search of impounded vehicle given that the search was not motivated by criminal investigative purposes, but administrative caretaking purposes); *Camara v. Municipal Court*, 387 U.S. 523, 531 (1967) (permitting administrative inspections to enforce regulatory housing codes). This Court's precedents therefore, in the roadblock as well as non-roadblock contexts, unambiguously provide that the requirement of individualized suspicion may be constitutionally relaxed only when government's primary purpose is the advancement of special regulatory objectives beyond the ordinary need for crime control.

The roadblocks at issue here, however, run directly antithetical to this Court's precedents and therefore should not be permitted. Because roadblocks constitute seizures for the purposes of the Fourth Amendment, *see supra* at 10 n.5, Petitioner's roadblock program is constitutional only if it is primarily designed to serve one of the special, non-criminal purposes discussed above. As found by the Supreme Court of Illinois, Petitioner's roadblock scheme was designed

> to obtain information from motorists regarding a hit-and-run accident that took place one week earlier, at the same location, and at the same time of day. In particular, the police wanted information regarding a Ford Bronco or full-sized pickup truck implicated in the accident.

Lidster, 202 Ill.2d at 3. Petitioner therefore initiated the roadblock not with the purpose of uncovering regulatory or other non-criminal dangers to roadway safety among the

class of drivers stopped, but with the objective of identifying potential witnesses to a prior criminal offense or vehicular crime.

This purpose, however, is synonymous with an interest in "the ordinary enterprise of investigating crimes," *Edmond*, 531 U.S. at 44, and therefore does not meet constitutional standards. First, witness identification and questioning is a necessary incident to the investigation of crime, *see, e.g.,* United States Department of Justice, National Institute of Justice, *Crime Scene Investigation: A Guide for Law Enforcement*, at 1, 13, 14, 18, 20, 25 (January 2000) (recognizing that the identification and careful questioning of potential witnesses is a critical aspect of criminal investigations), <http://www.ncjrs.org/pdffiles1/nij/178280.pdf> and, as such, is indistinguishable from a roadblock checkpoint designed to apprehend the individual perpetrator of the hit-and-run accident – a checkpoint plainly unconstitutional under *Edmond*. If it is unconstitutional for the police to conduct a checkpoint designed to apprehend potential violators of particular crimes, surely it is unconstitutional for police to conduct the same checkpoint for the purpose of finding and interrogating hypothetical witnesses to those crimes.

Even more to the point, the informational roadblocks here at issue necessarily serve ordinary crime control interests, as distinguished from the kind of special, regulatory interests recognized by this Court, precisely because they are focused entirely on the retrospective investigation of already committed acts, as opposed to the prospective prevention of potential harms to public safety. Here, the roadblock was initiated solely to obtain information concerning a specific accident that had occurred a week prior at the same location. The common denominator of

the special needs cases, by contrast, is that they are categorically focused on enjoining prospective harms to special government needs posed by broad classes of potential offenders. The special needs exception simply does not permit suspicionless seizures in connection with the retrospective investigation and apprehension of specific, knowable individuals who are believed to have potentially been involved in wrongdoing. Rather, that is the virtual definition of "the ordinary enterprise of investigating crimes," *Edmond*, 531 U.S. at 44, and therefore fails to satisfy Fourth Amendment standards concerning suspicionless seizures.

For these reasons, Petitioner's roadblock program is incompatible with this Court's special needs doctrine and therefore violates the Fourth Amendment. The Fourth Amendment allows suspicionless seizures in limited circumstances, and these circumstances, decidedly, do not permit informational seizures.

CONCLUSION

If this Court were to permit government, without suspicion, to detain individuals on the indiscriminate and omni-present rationale that they might have information relevant to the criminal conduct of third parties, the Fourth Amendment's protections of personal autonomy would be imaginary. Moreover, such a holding would be irreconcilable not only with the Framers' express contempt for suspicionless seizures, but also with this Court's longstanding precedents specifically prohibiting informational seizures, and permitting suspicionless seizures only in limited "special needs" circumstances. Accordingly, the

Court should find unconstitutional Petitioner's regime of roadblock seizures and affirm the judgment of the Supreme Court of Illinois.

Respectfully submitted,

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